

**PAYNE & FEARS LLP**  
ATTORNEYS AT LAW  
4 PARK PLAZA, SUITE 1100  
IRVINE, CA 92614  
(949) 851-1100

**FILE ON DEMAND**

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James L. Payne, Bar No. 107021  
E-Mail: [jlpaynefears.com](mailto:jlpaynefears.com)  
James R. Moss, Jr., Bar No. 196725  
E-Mail: [jrm@paynefears.com](mailto:jrm@paynefears.com)  
PAYNE & FEARS LLP  
4 Park Plaza, Suite 1100  
Irvine, CA 92614  
Telephone: (949) 851-1100  
Facsimile: (949) 851-1212

Attorneys for Defendant  
Lincoln Military Property Management, Inc.

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JULIE PICKERING,

Plaintiff,

v.

LINCOLN MILITARY PROPERTY  
MANAGEMENT, INC.; DOES 1 to  
50,

Defendants.

CASE NO. **EDCV 11-00851 VAP (DTBx)**

San Bernardino County Superior  
Court Case No. CIVMS1000760

**CLASS ACTION**

PETITION AND NOTICE OF REMOVAL  
OF CIVIL ACTION UNDER 28 U.S.C.  
§§ 1331 AND 1441

**[FEDERAL QUESTION]**

Action Filed: October 7, 2010

FILED  
2011 JUN -1 PM 3:54  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
SANTA ANA

1 TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL  
2 DISTRICT OF CALIFORNIA, AND TO PLAINTIFF JULIE PICKERING, AND HER  
3 COUNSEL OF RECORD:  
4

5 PLEASE TAKE NOTICE that Defendant Lincoln Military  
6 Property Management, Inc. ("Defendant" or "Lincoln") hereby  
7 removes this action from the Superior Court of the State of  
8 California for the County of San Bernardino to the United States  
9 District Court for the Central District of California, on the  
10 following grounds:  
11

12 **PLAINTIFF'S STATE COURT ACTION**  
13

14 1. Defendant is informed and believes that on or  
15 about October 7, 2010, Plaintiff Julie Pickering ("Plaintiff")  
16 filed her Complaint in the Superior Court of the State of  
17 California, County of San Bernardino, against Lincoln Military  
18 Housing Property Management. This Complaint was not served on  
19 Defendant. Defendant is informed and believes that on or about  
20 December 10, 2010, Plaintiff Julie Pickering ("Plaintiff") filed  
21 her First Amended Complaint against Defendant in the Superior  
22 Court of the State of California, County of San Bernardino,  
23 entitled "Julie Pickering, Plaintiff, vs. Lincoln Property  
24 Company, Case No. CIVMS1000760 (the "State Court Action"). This  
25 Complaint was not served on Defendant. (Attached as Exhibit "E.")  
26

27 2. On or about April 21, 2011, Plaintiff forwarded to  
28 Defendant's counsel, via U.S. Mail, a copy of a Second Amended

1 Complaint, naming Lincoln Military Property Management, Inc. as  
2 Defendant in place of Lincoln Property Company, with a Notice of  
3 Acknowledgement of Receipt. A true and correct copy of the  
4 Second Amended Complaint is attached hereto as Exhibit "A."

5  
6 3. On April 21, 2011, Plaintiff also delivered to  
7 Defendant a Stipulation to File the Second Amended Complaint. On  
8 May 2, 2011, Defendant executed and returned the Stipulation to  
9 File the Second Amended Complaint. A true and correct copy of  
10 the executed Stipulation to File the Second Amended Complaint is  
11 attached hereto as Exhibit "B."

12  
13 4. On May 2, 2011, Defendant also signed and served  
14 the Notice and Acknowledgement of Receipt, accepting service of  
15 the Second Amended Complaint effective that day. A true and  
16 correct copy of the signed Notice of Acknowledgement of Receipt  
17 is attached hereto as Exhibit "C."

18  
19 5. On May 31, 2011, Defendant filed its Answer in San  
20 Bernardino County Superior Court. A true and correct copy of the  
21 Answer is attached hereto as Exhibit "D."

22  
23 6. This Notice is timely pursuant to 28 U.S.C. §  
24 1446(b) and Rule 6 of the Federal Rules of Civil Procedure, in  
25 that Defendant was originally served with the Second Amended  
26 Complaint, the first Complaint served on Defendant, no more than  
27 thirty (30) days before the filing of this Notice.  
28

1           7.    The documents attached hereto as Exhibits "A"  
2 through "D" constitute the pleadings, process and orders served  
3 upon or by Defendant in the State Court Action.

4  
5                   FEDERAL QUESTION JURISDICTION UNDER  
6                   "FEDERAL ENCLAVE" DOCTRINE  
7

8           8.    "The district courts shall have original  
9 jurisdiction of all civil actions arising under the Constitution,  
10 laws or treaties of the United States." 28 U.S.C. § 1331. Any  
11 such action may be removed to the district court if it is  
12 originally filed in a state court:

13  
14                   "any civil action brought in a State court of  
15 which the district courts of the United  
16 States have original jurisdiction, may be  
17 removed by the defendant or the defendants,  
18 to the district court of the United States  
19 for the district and division embracing the  
20 place where such action is pending."  
21

22           28 U.S.C. § 1441(b). Removal on such "federal question" grounds  
23 is proper even if the parties are not of diverse citizenship, and  
24 without regard to the amount in controversy. 28 U.S.C.  
25 § 1441(b).  
26

27           9.    This action arises under the laws of the United  
28 States, and this court has federal question jurisdiction, because

1 Plaintiff's claims are based on conduct occurring entirely on  
2 United States Marine Corps Base Camp Pendleton, which is a  
3 federal enclave. When a person's alleged injuries took place on  
4 a federal enclave, including a military base, the action is said  
5 to "arise under" federal law, and is therefore subject to federal  
6 question jurisdiction. See *Willis v. Craig*, 555 F.2d 724, 726  
7 (9<sup>th</sup> Cir. 1977); *Fung v. Abex Corp.*, 816 F. Supp. 569, 571 (N.D.  
8 Cal. 1992); *Mater v. Holley*, 200 F.2d 123, 125 (5<sup>th</sup> Cir. 1952).

9  
10 **A. The "Federal Enclave" Doctrine.**

11  
12 10. The "federal enclave" doctrine is derived from the  
13 U.S. Constitution, Article I, Section 8, Clause 17, which states  
14 that "Congress shall have Power ... to exercise like Authority over  
15 all Places purchased by the Consent of the Legislature of the  
16 State in which the Same shall be..." The United States' exclusive  
17 jurisdiction over what is then essentially its own property is  
18 set out by the Supremacy Clause of the U.S. Constitution, which  
19 provides that on U.S. government lands, "This Constitution, and  
20 the Laws of the United States which shall be made in Pursuance  
21 thereof; ... shall be the supreme Law of the Land..." U.S. Const.  
22 Art. VI, cl. 2.

23  
24 11. The Supremacy Clause and the Plenary Powers Clause  
25 of the Constitution provide Congress with exclusive authority  
26 over the regulation of federal facilities and activities. See  
27 *McCulloch v. Maryland*, 17 U.S. 316 (1819). Absent unambiguous  
28 authorization from Congress, the activities conducted on federal

1 installations are shielded from state law or regulation enacted  
2 after the creation of an enclave. *Goodyear Atomic Corp. v.*  
3 *Miller*, 486 U.S. 174, 180 (1988) (quoting *Environmental*  
4 *Protection Agency v. California ex rel. State Water Resources*  
5 *Control Bd.*, 426 U.S. 200, 211 (1976)). The Constitution provides  
6 for "immunity of the instruments of the United States from state  
7 control in the performance of their duties." *Johnson v.*  
8 *Maryland*, 254 U.S. 51, 57 (1920).

9  
10 12. Only state laws in effect at the time of cession  
11 or transfer of jurisdiction to a federal enclave can continue in  
12 operation. See *James Stewart & Co.*, 309 U.S. 94, 100, 60 S. Ct.  
13 431 (1940). Laws subsequently enacted by the state are  
14 inapplicable in the federal enclave unless they come within a  
15 reservation of jurisdiction or are adopted by Congress. See *id.*;  
16 *Paul v. United States*, 371 U.S. 245, 268, 83 S. Ct. 426, 9 L. Ed.  
17 2d 292 (1963); see also 91 C.J.S. *United States* § 15. *Stiefel v.*  
18 *Bechtel Corp.*, 497 F. Supp. 2d 1147, 1153. Thus, employees who  
19 work on "federal enclaves" generally are not subject to the  
20 surrounding state's wage and hour laws - primarily because on  
21 federal property, federal law controls. See *Koren v. Martin*  
22 *Marietta Servs., Inc.*, 997 F. Supp. 196, 205-06 (D.P.R. 1998)  
23 (determining state wage and hour laws were inapplicable); see  
24 also *Lamb v. Martin Marietta Energy Sys., Inc.*, 835 F. Supp. 959,  
25 963 (W. D. Ky. 1993) (federal government contractor shielded from  
26 state law liability for acts done on federally owned facility,  
27 unless Congress clearly expresses a contrary intent).

1     B.     Plaintiff's Claims Arise From Conduct Occurring on the Camp  
2           Pendleton Marine Base, Including San Onofre Nuclear  
3           Generating Station.  
4

5           13. Defendant Lincoln operates residential housing on  
6 military bases, including the Marine Corps Base Camp Pendleton,  
7 where Pickering worked. (Declaration of Steve Browne Decl., ¶¶  
8 2-4). Plaintiff's Complaint alleges that she was employed by  
9 Lincoln from January 16, 2006 through April 28, 2008.  
10 (Complaint, ¶ 7). Plaintiff alleges that during that period, (1)  
11 she was unable to take her meal and rest breaks as required by  
12 the California Labor Code sections 226.7 and 512, and California  
13 Industrial Welfare Commission ("IWC") Wage Order No. 5  
14 (Complaint, ¶¶ 10, 14-18); (2) she was not paid overtime wages  
15 for overtime hours worked as required by California Labor Code  
16 section 510 and 1194 (Complaint, ¶¶ 11, 34-37), (3) she was not  
17 provided itemized wage statements with hours worked, wages,  
18 deductions and other data required by California Labor Code  
19 section 226 (Complaint, ¶¶ 12, 30-33), and (4) Lincoln failed to  
20 record her wages, hours and meal periods as required by IWC Wage  
21 Order No. 5 (Complaint, ¶¶ 26-29).  
22

23           14. Throughout her employment, Pickering worked as a  
24 Leasing Consultant or Service Manager for Lincoln. Her job was  
25 to facilitate housing arrangements for military families  
26 stationed at Camp Pendleton, including ensuring that resident  
27 units were prepared for moving in and that they were properly  
28 maintained, and facilitating transfers to different units or



1 departures from the Base. All of Pickering's work for Lincoln,  
2 at the Del Mar District and San Onofre District, was performed on  
3 the Camp Pendleton Marine Corps Base, either at the District  
4 Offices or in and around the residences of the service members  
5 and military families, all of whom lived on the Marine Corps  
6 Base. (Browne Decl., ¶¶ 2-4). Additionally, all actions taken  
7 by Lincoln regarding Pickering's employment, including providing  
8 Pickering with meal and rest periods, and decisions regarding  
9 payment of Pickering's wages including overtime pay, which was  
10 reflected in Pickering's wage statements (the basis for all of  
11 Plaintiff's claims), were made by Lincoln management employees on  
12 the Camp Pendleton Marine Corps Base. (Browne Decl., ¶¶ 2-4).

13  
14 **C. Camp Pendleton, including the San Onofre Nuclear Generating**  
15 **Station Facility, is a Federal Enclave.**  
16

17 15. The federal courts have repeatedly held that Camp  
18 Pendleton, including the San Onofre Nuclear Generating Station,  
19 is a "federal enclave." See *Cooper v. Southern California Edison*  
20 *Co.*, 170 Fed. Appx. 496, 497 (9th Cir. 2006) ("SONGS is located  
21 within a federal enclave, acquired by the United States in 1941  
22 when it established Camp Pendleton.") (citing *United States v.*  
23 *Fallbrook Pub. Util. Dist.*, 110 F. Supp. 767, 771 (S.D. Cal.  
24 1953)); *Snow v. Bechtel Constr., Inc.*, 647 F. Supp. 1514, 1515-16  
25 (C.D. Cal. 1986) (taking judicial notice of the fact that Camp  
26 Pendleton, including SONGS, is located within a federal enclave).  
27 In *Stiefel v. Bechtel Corp.*, 497 F. Supp. 2d 1153, 1157 (S.D.  
28 Cal. 2007), the District Court explained that "Camp Pendleton is



1 within the exclusive territorial jurisdiction of the United  
 2 States . . . . The San Onofre power plant is located within the  
 3 reservation on a 60-year easement granted by the Navy Department  
 4 in 1964 pursuant to Pub. L. 88-82, 77 Stat. 115." *Id.* at 1154.  
 5 (internal citations omitted). Thus, the Court found that the  
 6 employee of a government contractor working at SONGS was employed  
 7 on a federal enclave, and that the government contractor was not  
 8 subject to state laws such as the California Labor Code.<sup>1</sup>  
 9 Likewise, because the "federal enclave" doctrine applies to  
 10 Plaintiff's claims, this Court has federal question jurisdiction.

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<sup>1</sup> As the Court explained in *Steifel*, in 1939, California consented to allow the United States to acquire by purchase or condemnation any track of land within the state for the purpose of erecting forts or other needful buildings. (citing Cal. Stats. 1939, ch. 710, § 1, p. 2231). In 1942, the United States acquired Camp Pendleton through condemnation. (citing Law Enforcement at San Onofre Nuclear Generation Plant, 1 Op. Off. Legal Counsel 204, 204-05 (1977), and Letter from James Forrestal, Under Secretary of the Navy, to Earl Warren, California Governor (Sept. 8, 1943) (on file in Official Recorder's Office of San Diego County, California). In 1963, Congress authorized the Secretary of the Navy to grant an easement allowing Southern California Edison Company and San Diego Gas and Electric Company to construct, operate, and maintain a nuclear electric generating station in Camp Pendleton Naval Reservation. (citing Act of July 30, 1963, Pub. L. No. 88-82, 77 Stat. 115). The U.S. Department of Justice has confirmed that SONGS is the nuclear generating plant authorized by Congress. (citing Law Enforcement at San Onofre Nuclear Generation Plant, supra, 1 Op. Off. Legal Counsel at 204-05). Jurisdiction over the land for Camp Pendleton was ceded by the State of California and accepted by the Secretary of the Navy on behalf of the United States, creating a "federal enclave" no later than 1942. *Id.* at 1145.

CONCLUSION

Because Plaintiff's asserted claims arise from conduct allegedly occurring on Marine Corps Base Camp Pendleton, including the San Onofre Nuclear Generating Station, and Camp Pendleton is an exclusive federal enclave, her claims arise under federal law, even though they are pled as arising under California law. Therefore, Defendant respectfully requests that this Court exercise its removal jurisdiction over this action.

DATED: May 31, 2011

PAYNE & FEARS LLP

By: 

JAMES R. MOSS, JR.

Attorneys for Defendant  
LINCOLN MILITARY PROPERTY MANAGEMENT,  
INC.

4822-8616-1673, v. 2

INDEX OF EXHIBITS

EXHIBIT A: Second Amended Complaint  
EXHIBIT B: Stipulation to File Second Amended Complaint  
EXHIBIT C: Notice of Acknowledgement of Receipt  
EXHIBIT D: Answer to Complaint  
EXHIBIT E: First Amended Complaint (not served on Defendant)

**EXHIBIT A**

**ENGLISH LLOYD & ARMENTA**

Juan M. Armenta/150599  
41750 Rancho Las Palmas Drive  
Building G  
Rancho Mirage, California 92270  
TEL (760) 340-2777 FAX (760) 340-6895

ATTORNEYS FOR JULE PICKERING

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

JULIE PICKERING,	)	CASE NO. CIVMS1000760
	)	
	)	<b>SECOND AMENDED COMPLAINT</b>
Plaintiffs,	)	<b>FOR THE RECOVERY OF WAGES</b>
	)	<b>AND CIVIL PENALTIES</b>
v.	)	
	)	
LINCOLN MILITARY PROPERTY	)	
MANAGEMENT, INC., Does 1 to 50,	)	
	)	
	)	
Defendants,	)	
	)	
	)	

Plaintiff JULIE PICKERING, for Causes of Action against Defendants LINCOLN  
MILITARY PROPERTY MANAGEMENT, INC, Does 1 to 50, alleges as follows:

I.

**INTRODUCTORY STATEMENT AND NATURE OF ACTION**

1. This action arises out of unlawful employment practices against Plaintiff JULIE  
PICKERING (hereinafter referred to as "Plaintiff" or "Pickering") by her employer, Defendants  
LINCOLN MILITARY PROPERTY MANAGEMENT, INC, Does 1 to 50,, (hereinafter referred  
to as "Defendant" or "Lincoln). Pickering brings this action against Lincoln and Does 1  
through 50 for engaging in a systematic scheme of wage abuse and unlawful employment

1 practices, including but not limited to failing to pay Plaintiff overtime wages, failing to provide  
2 Plaintiff with proper meal and rest breaks and premium pay for missed breaks, failing to  
3 record hours worked and meal periods, and failure to provide itemized wage statements.

4 Reference to "Plaintiff" or "Pickering" means Plaintiff in her individual capacity and in  
5 her his ex relatione capacity on behalf of the State of California. Further, reference to  
6 Plaintiff within in each Cause of Action also means similarly situated employees.

7 2. Pickering seeks to recover, among other things, unpaid wages and benefits,  
8 interest, attorneys' fees, penalties, costs and expenses pursuant to the California Labor Code  
9 including but not limited to §§ 218.5, 218.6, 226, 226.7, 510, 512 and 1194.

10 **II.**

11 **PARTIES, JURISDICTION, AND VENUE**

12 3. Plaintiff is and at all relevant times was a resident of the State of California.

13 4. Plaintiff is informed and believes and on that basis alleges that Lincoln is and at all  
14 relevant times was authorized to do business in the State of California and conducted  
15 business in the various locations in the State of California, including the County of San  
16 Bernardino, and that it is an employer as defined in and subject to the California Labor Code  
17 and the Industrial Welfare Commission ("IWC") Orders.

18 5. The true names and capacities of the Defendants named as DOES 1 through 50  
19 are presently unknown to Plaintiff. Plaintiff will amend this Complaint, setting forth the true  
20 names and capacities of these fictitious Defendants when they are ascertained. Plaintiff is  
21 informed and believes and on that basis alleges that each of the fictitious Defendants has  
22 participated in the acts alleged in this Complaint.

23 6. Plaintiff is further informed and believes and thereon alleges that at all relevant  
24 times, each Defendant, whether named or fictitious, was the agent or employee of the

1 corporation, or the corporation itself, and in participating in the acts alleged in this Complaint,  
2 acted at least in part within the scope of such agency or employment or ratified the acts of  
3 the other.

4 **III.**

5 **GENERAL ALLEGATIONS**

6 7. Pickering began her employment with Lincoln on or about 01/16/06 and her  
7 employment continued until April 28, 2008. Pickering's employment with Lincoln was  
8 continuous during this time period.

9 8. Lincoln is in the business of providing housing to military personnel along with  
10 services for that housing consisting of repairs and maintenance to the dwelling units.

11 9. Pickering duties included providing maintenance and repair services, inspection of  
12 dwelling units and common areas.

13 10. During her employment, Pickering was frequently unable to take his mandated  
14 meal and break periods. Lincoln specifically required Pickering to forego taking any rest or  
15 meal breaks although she would frequently work shifts of such length that the Labor Code  
16 mandates rest and meal break periods.

17 11. During her employment Pickering was often not paid overtime wages for overtime  
18 hours worked.

19 12. During her employment Pickering was often not provided itemized statements of  
20 wages, deductions, hours worked and other data as required by Labor Code § 226.

21 13. During her employment Pickering Lincoln failed to keep records of wages paid,  
22 hours worked, meal periods, etc. as required by the Labor Code and IWC Order No. 5-  
23 2001(7).

24 **IV.**



**FIRST CAUSE OF ACTION**

[Failure to Provide Mandated Rest & Meal Periods]

(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order No. 5, §§ 11 & 12)

14. Plaintiff alleges and incorporates by this reference paragraphs 1 through 13 inclusive, as though fully set forth herein.

15. Labor Code § 226.7 requires employers including Defendant to provide to its employees proper meal and rest periods as mandated by IWC Order No. 5-2001.

16. Labor Code § 512(a) and IWC Order No. 15-2001, provide in part:

"(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided."

17. Defendant violated Labor Code §§ 226.7 and 512 and the IWC Orders when it failed to provide proper meal periods to Plaintiff during the time period Plaintiff worked for Lincoln.

18. Defendant violated Labor Code § 226.7 and the IWC Orders when it failed to provide proper rest periods to Plaintiff.

**V.**

**SECOND CAUSE OF ACTION**

**[Failure to Pay Premium Wages]**

19. Plaintiff alleges and incorporates by this reference paragraphs 1 through 18 inclusive, as though fully set forth herein.

20. Pursuant to Labor Code § 226.7(b) and IWC Order No. 5-2001, § 11(B), Defendant is required to pay Plaintiff one additional hour of pay at the employee's regular rate of compensation for each day that the meal period is not provided. Defendant has not done so.

21. Pursuant to Labor Code § 226.7(b) and IWC Order No. 5-2001, § 12(B), Defendant is required to pay Plaintiff one additional hour of pay at the employee's regular rate of compensation for each day that the rest period is not provided. Defendant has not done so.

22. As a result of Defendant's failure to pay Plaintiff an additional hour of pay for each day a meal period was not provided, Plaintiff suffered and continues to suffer a loss of wages and compensation, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

23. As a result of Defendant's failure to pay Plaintiff an additional hour of pay for each day a rest break period was not provided, Plaintiff suffered and continues to suffer a loss of wages and compensation, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

24. In committing the violations of state law as herein alleged, Defendant has knowingly and willfully refused to perform its obligations to compensate Plaintiff for all wages earned and all hours worked. As a direct result, Plaintiff has suffered and continues to suffer substantial losses related to the use and enjoyment of such monies, lost interest on such

1 monies and expenses and attorney's fees in seeking to compel Defendant to fully perform its  
2 obligation under state law, all to his respective damage in amounts according to proof at trial  
3 and within the jurisdiction of this Court.

4 25. Additionally, Plaintiff seeks interest on all due and unpaid wages pursuant to  
5 Labor Code § 218.6.

6 **V.**

7 **THIRD CAUSE OF ACTION**

8 [Failure to Record Wages, Hours and Meal Periods]

9 26. Plaintiff incorporates paragraphs 1 through 24 above.

10 27. The Labor Code and IWC Order No. 5-2001 require an employer to record wages  
11 paid, hours worked and meal periods and to keep such records for a period of three years.

12 28. Lincoln failed to keep records as required by the Labor Code and IWC Order No.  
13 5-2001.

14 29. As a result of the failure to keep records Plaintiff has been denied the opportunity  
15 to review and have proof of wages paid, hours worked and meal periods. In addition, the  
16 State of California has also been denied the opportunity to review and have proof of wages  
17 paid, hours worked and meal periods. Both render Defendants subject to civil penalties.

18 **VI.**

19 **FOURTH CAUSE OF ACTION**

20 [Failure to Provide Itemized Statements]

21 30. Plaintiff incorporates paragraphs 1 through 29 above.

22 31. Labor Code § 226 requires an employer to provide to an employee a wages  
23 statement providing, among other things, wages paid, rate of pay, regular and overtime,  
24 hours worked and deductions made.

1 32. Lincoln failed to provide wages statements to Plaintiff as required by the Labor  
2 Code.

3 33. As a result of the failure to keep records Plaintiff has been denied the opportunity  
4 to review and have proof of wages paid, rate of pay, regular and overtime, hours worked and  
5 deductions made and Plaintiff is entitled to the relief identified in Labor Code § 226(e),  
6 including penalties and attorney fees.

7 **VI.**

8 **FIFTH CAUSE OF ACTION**

9 [Failure to Pay Overtime]

10 34. Plaintiff incorporates paragraphs 1 through 33 above.

11 35. Labor Code § 510 provides that a day's work is eight hours and that all hours  
12 worked in excess of eight hours per day must be paid at overtime rates.

13 36. Plaintiff worked hours that should have been compensated at overtime rates.  
14 Plaintiff was frequently not paid overtime rates for her overtime hours worked.

15 37. Pursuant to Labor Code § 1194 Plaintiff is entitled to bring an action to recover  
16 the overtime wages and in addition to wages is entitled to interest, costs and attorney fees.

17 **VII.**

18 **SIXTH CAUSE OF ACTION**

19 [Private Attorney General Act of 2004]

20 38. Plaintiff incorporates paragraphs 1 through 37 above.

21 39. The Labor & Workforce Development Agency (LDWA) is an agency of the  
22 executive branch of the State of California. It is empowered to enforce the labor laws of  
23 California and generally executes that enforcement by a subdivision named the Division of  
24 Labor Standards Enforcement (DLSE).

1           40. On January 1, 2004, the Private Attorney General Act of 2004 ("PAGA") became  
2 effective. It states in relevant part,

3                   "Notwithstanding any other provision of law, any provision of this  
4 code that provides for a civil penalty to be assessed and collected  
5 by the Labor and Workforce Development Agency or any of its  
6 departments, divisions, commissions, boards, agencies, or  
7 employees, for a violation of this code, may, as an alternative, be  
8 recovered through a civil action brought by an aggrieved  
9 employee on behalf of himself or herself and other current or  
10 former employees pursuant to the procedures specified in Section  
11 2699.3."

12           41. Lincoln at all times relevant to this complaint was a corporation operating within  
13 the State of California. At all times relevant to this complaint Lincoln employed dozens of  
14 employees in the State of California, making it subject to the labor laws of the State of  
15 California and subject to the jurisdiction of this court.

16           42. Pickering, an adult resident of the State of California, was an employee of Lincoln  
17 during 2009 in Palm Springs, California, and within the jurisdiction and venue of this court.

18           43. On October 12, 2009, pursuant to Labor Code § 2699.3(a)(1), the LWDA was  
19 provided notice of an intention to commence an action pursuant to the Private Attorney  
20 General Act of 2004 to recover civil penalties on behalf of the LWDA for violations by Lincoln  
21 of Labor Code §§ 226.7, 512, and associated IWC Orders, and provided the facts and  
22 theories to support the alleged violations. This notice was provided by certified mail as  
23 required by Labor Code § 2699.3(a)(1), October 12, 2009, to both defendants and the  
24 LWDA. On December 8, 2009, the LDWA advised Pickering that it would not proceed and  
that Pickering as the Relator could proceed on behalf of the LWDA.

25           44. As to Relator and similarly situated employees, Lincoln has failed to:

- provide meal and rest breaks as required by Labor Code § 226.7 and 512;

- 1 • failed to pay premium wages for missed meal and rest breaks as required by
- 2 Labor Code § 226.7 and 812;
- 3 • failed to pay overtime as required by Labor Code § 510, 1194;
- 4 • failed to maintain records of hours and meal periods in violation of Labor Code
- 5 226;
- 6 • failed to provide itemized statements to employees in violation of Labor Code §
- 7 226;.

8 A civil penalty is assessable for each violation per PAGA and relevant Labor Code  
9 sections which Relator seeks on behalf of the LWDA per PAGA.

10 **VI.**

11 **SEVENTH CAUSE OF ACTION**

12 [Violation of Bus. & Prof. Code § 17200 et Seq.]

13 45. Plaintiff incorporates paragraphs 1 through 48 above.

14 46. Defendant's failure to pay wages for missed meal and rest periods in violation of  
15 California Law (Labor Code §§ 226.7(b), 510, 512 and Industrial Welfare Commission Wage  
16 Order No. 7 constitutes an unlawful business act and practice in violation of Business &  
17 Professions Code § 17200 et seq.

18 47. Pursuant to Business and Professions Code § 17200 et seq., Plaintiff and the  
19 class members are entitled to restitution of the unpaid wages under Labor Code § 226.7, 510  
20 and 512 withheld and retained by defendants during a period that commences four years  
21 prior to the filing of this action and continuing at least through the date judgement is entered  
22 in this action.

23 48. Plaintiff seeks restitution of all unpaid wages, waiting time wages, a permanent  
24 injunction requiring defendants to afford meal and rest breaks and pay for missed meal

1 periods, interest, an award of attorney's fees pursuant to Code of Civil Procedure § 1021.5  
 2 and other applicable law, and costs.

### 3 VII.

#### 4 CLASS ALLEGATIONS

5 49. This action has been brought and may properly be maintained as a class action  
 6 pursuant to the provisions of CCP § 382 and other applicable law, because there is a  
 7 well-defined community of interest in the litigation and the proposed class is ascertainable.

8 50. The proposed class that Plaintiff seeks to represent is composed of current and  
 9 former employees of Lincoln within California at any time beginning four years preceding the  
 10 filing of this complaint holding any position in which they acted as a elder health care  
 11 provider.

12 51. There is a well defined community of interest in the litigation and the class is  
 13 ascertainable:

14 a. Numerosity: The plaintiff class is so numerous that the individual joinder of all  
 15 members is impractical under the circumstances of this case. While the exact number of  
 16 class members is unknown to Plaintiff at this time, Plaintiff is informed and believes and  
 17 thereon alleges that in California well over twenty current and former employees of Lincoln  
 18 were denied meal and rest breaks and were not compensated for missed meal breaks and  
 19 have not had records regarding hours worked and meal periods maintained.

20 b. Common questions predominate: Common questions of law and fact exist as to all  
 21 members of the plaintiff class and predominate over any questions that affect only individual  
 22 members of the class. The common questions of law and fact include, but are not limited to:  
 23  
 24



1 i) Whether defendants' practice of not affording rest breaks to employees who  
2 share common classifications, duties, responsibilities was unlawful and violative of the  
3 California Labor Code and Industrial Welfare Commission orders;

4 ii) Whether defendants' practice of not affording meal breaks to employees  
5 who share common classifications, duties, responsibilities was unlawful and violative of the  
6 California Labor Code and Industrial Welfare Commission orders;.

7 iii) Whether defendants' practice of not paying for missed rest breaks to  
8 employees who share common classifications, duties, responsibilities and violative of the  
9 California Labor Code and Industrial Welfare Commission orders;

10 iv) Whether defendants' practice of not paying for missed meal breaks to  
11 employees who share common classifications, duties, responsibilities and violative of the  
12 California Labor Code and Industrial Welfare Commission orders;

13 v) Whether the retention of the wages due the employees who share common  
14 classifications, duties, responsibilities was intentional;

15 vi) Whether records were kept regarding hours worked and meal periods;

16 vii) Whether the failure to keep records hours worked and meal periods was  
17 intentional;

18 viii) Whether itemized statement were provided to employees;

19 ix) Whether employees were systematically paid less than minimum wage and  
20 whether this was a design or plan by management;

21 x) Whether employees hours were set so as to merit overtime pay;

22 xi) Whether employees were systematically not paid overtime when merited  
23 and whether this was a design or plan by management.  
24

1        c. Typicality: Plaintiff's claims are typical of the claims of the class members. Plaintiff  
2        and the members of the class sustained damages arising out of defendants' common  
3        practice of failing to afford rest and meal breaks, failing to pay for missed meal and rest  
4        periods and failure to keep records. Plaintiff, like the other class members, routinely worked  
5        more than six hours per day and was not afforded rest or meal breaks and was not paid for  
6        missed meal periods. Plaintiff performed the same general duties and had the same general  
7        responsibilities as the other class members. Each of the claims of individuals does not  
8        exceed \$75,000.00.

9        d. Adequacy: Plaintiff will fairly and adequately protect the interests of the members  
10       of the class. Plaintiff has no interest that is adverse to the interests of the other class  
11       members.

12       e. Superiority: A class action is superior to other available means for the fair and  
13       efficient adjudication of this controversy. Because individual joinder of all members of the  
14       class is impractical, class action treatment will permit a large number of similarly situated  
15       persons to prosecute their common claims in a single forum simultaneously, efficiently, and  
16       without the unnecessary duplication of effort and expense that numerous individual actions  
17       would engender. The expenses and burdens of individual litigation would make it difficult or  
18       impossible for individual members of the class to redress the wrongs done to them, while  
19       important public interests will be served by addressing the matter as a class action. The cost  
20       to and burden on the court system of adjudication of individualized litigation would be  
21       substantial, and substantially more than the costs and burdens of a class action.  
22       Individualized litigation would also prevent the potential for inconsistent or contradictory  
23       judgments.  
24

1        f. Public Policy Consideration: Employers throughout the state violate wage and hour  
 2 laws. Current employees are often afraid to assert their rights out of fear of direct or indirect  
 3 retaliation. Former employees are fearful of bringing actions because they perceive their  
 4 former employers can blacklist them in their future endeavors through negative references  
 5 and by other means. Class actions provide the class members who are not named in the  
 6 complaint with a type of anonymity that allows for vindication of their rights.

7        WHEREFORE, Plaintiff prays for relief as follows:

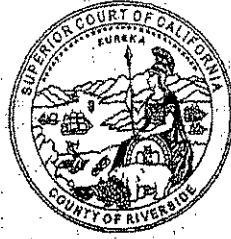
- 8        1. For all unpaid wages under Labor Code § 226.7(b), 510, 512, and 1194, in a sum  
 9 for each individual not to exceed \$75,000.00;
- 10       2. For reasonable attorney fees, cost of suit, and interest to the extent permitted by  
 11 law, including but not limited to PAGA and Labor Code §§ 218.5, 218.6, 226, 510, 512, 1194  
 12 and Code of Civil Procedure § 1021.5;
- 13       3. For interest pursuant to Labor Code § 218.6;
- 14       4. For restitution per Business & Professions Code § 17200 et seq.
- 15       5. For a permanent injunction per Business & Professions Code § 17200 et seq.
- 16       6. For civil penalties per PAGA;
- 17       7. For class certification of this action as a class action, appointment of Plaintiff as the  
 18 class representative and for Plaintiff's counsel to be confirmed as class counsel;
- 19       8. For such other relief as the deemed just and proper;

20       Dated: April 21, 2011

Respectfully submitted,

21       ENGLISH LLOYD & ARMENTA

22       Juan M. Armenta  
 23  
 24



Superior Court of California  
County of Riverside

**PUBLIC NOTICE**

**NEW CIVIL LAW AND MOTION HEARING  
DATE ON-LINE RESERVATION SYSTEM**

Effective Monday, April 11, 2011, a new automated on-line system for reserving civil law and motion hearing dates will become operational in the western and mid-county regions, to be followed in the near future in the desert region.

With the exception of unlawful detainer and small claims cases, a civil law and motion hearing date can now be reserved on-line through the court's website. Attorneys and litigants will enter the case number and type of motion with a short title or description and then reserve a hearing date.

The only fee charged is the motion filing fee in accordance with statute. There are no additional fees to use this reservation system. The court accepts Visa, MasterCard, Discover, and American Express as forms of payment. A receipt with a confirmation number is available for printing.

Once a motion hearing date is reserved through the system, parties must serve and file the motion papers with the court pursuant to statute. Upon the filing of the motion and any related documents with the court, the reserved motion hearing date will be confirmed.

This convenient new service is available 24 hours a day, seven days a week. For further information, please visit the court's website at [www.riverside.courts.ca.gov](http://www.riverside.courts.ca.gov) and go to on-line services.

Sherri R. Carter

Court Executive Officer  
and Clerk of Court



## COURT NOTICE UPDATE



Note: Overnite Express and ASAP Legal are now Norco Delivery Services.

SUPERIOR COURT: COUNTY OF LOS ANGELES  
COURTESY COPIES REQUESTED  
POSTED: 02/01/11

# NOTICE TO ATTORNEYS

Los Angeles Superior Court  
Los Angeles County  
[www.lasuperiorcourt.org](http://www.lasuperiorcourt.org)  
Contact: Public Information Office 213-974-5227  
Acting Public Information Officer: Mary Hearn

Feb. 1, 2011

## 'COURTESY' COPIES REQUESTED FOR CIVIL FILINGS AT STANLEY MOSK COURTHOUSE

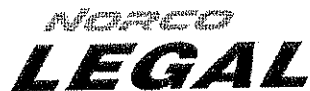
Effective Feb. 1, 2011

Due to the large volume of civil documents that are filed at the Stanley Mosk Courthouse and the imaging process that follows, it is requested that courtesy copies of all documents filed seven (7) days or less before the hearing date be delivered directly to the assigned courtroom.

All pleadings should continue to be filed in Room 102 except as otherwise required. Courtesy copies should be conformed before delivery to the courtroom.

Delivering courtesy copies to courtrooms will avoid delays and ensure the Court has the opportunity to review all filed documents in a timely fashion.

###



**COURT NOTICE UPDATE**



SUPERIOR COURT: ORANGE COUNTY  
NEW REQUIREMENTS: WRIT OF EXECUTION  
POSTED: 1/3/2010



**Superior Court of California  
County of Orange**

**CIVIL MANAGEMENT**

CIVIL OPERATIONS  
(657) 622-6578

FAMILY LAW OPERATIONS  
(657) 622-6069

December 30, 2010

**NEW REQUIREMENT FOR WRIT OF EXECUTION AND  
WRIT OF POSSESSION OR SALE**

Effective January 1, 2011, writs of execution and writs of possession or sale must include a statement indicating whether the case is limited civil or unlimited civil. The designation of "limited" or "unlimited" may be added in the case number field of the writ of execution or writ of possession or sale. The designation for small claims actions should be "limited."

This requirement is a result of the passage of Assembly Bill 2394 (Ch. 680) which includes amendments to Code of Civil Procedure sections 699.520 and 712.020.

**EXHIBIT “B”**



**ENGLISH LLOYD & ARMENTA**

Juan M. Armenta/150599  
41750 Rancho Las Palmas Drive  
Building G  
Rancho Mirage, California 92270  
TEL (760) 340-2777 FAX (760) 340-6895

ATTORNEYS FOR JULE PICKERING

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

JULIE PICKERING,

Plaintiffs,

v.

LINCOLN PROPERTY COMPANY, Does 1 to  
50,

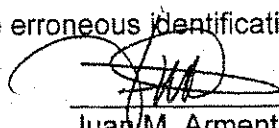
Defendants,

CASE NO. CIVMS1000760

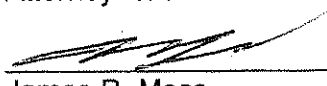
**STIPULATION TO FILE THE SECOND  
AMENDED COMPLAINT**

Counsel for Plaintiff and counsel for defendant Lincoln Military Property Management, Inc., erroneously sued as "Lincoln Property Company", stipulate that Plaintiff may file a Second Amended Complaint so as to correct the erroneous identification.

Dated: April 21, 2011

  
\_\_\_\_\_  
Juan M. Armenta  
Attorney for Plaintiff

Dated: 5/11/11

  
\_\_\_\_\_  
James R. Moss  
Attorney for Lincoln Military Property  
Management, Inc.

**EXHIBIT “C”**



**EXHIBIT “D”**

FILED ON DEMAND

1 James L. Payne, Bar No. 107021  
E-Mail: [jlp@paynefears.com](mailto:jlp@paynefears.com)  
2 James R. Moss, Jr., Bar No. 196725  
E-Mail: [jrm@paynefears.com](mailto:jrm@paynefears.com)  
3 PAYNE & FEARS LLP  
4 4 Park Plaza, Suite 1100  
Irvine, CA 92614  
Telephone: (949) 851-1100  
5 Facsimile: (949) 851-1212

FILED  
MAY 31 2011

by LEARNED Dep. Clerk  
SAN BERNARDINO COUNTY  
SUPERIOR COURT, JOSHUA TREE DISTRICT

6 Attorneys for Defendant  
7 Lincoln Military Property Management, Inc. *erroneously sued*  
8 *Lincoln Property Company*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN BERNARDINO

12 JULIE PICKERING,  
13 Plaintiff,

14 v.

15 LINCOLN MILITARY PROPERTY  
MANAGEMENT, INC.; DOES 1 to 50,  
16 Defendants.

CASE NO. CIVMS1000760

Assigned for all purposes to  
The Hon. Frank Gafkowsky  
Dept. M-4

ANSWER OF DEFENDANT LINCOLN  
MANAGEMENT PROPERTY, INC.  
TO PLAINTIFF'S SECOND  
AMENDED COMPLAINT

Action Filed: October 7, 2010

*erroneously  
sued as  
Lincoln Property  
Company*

Answer of Defendant Lincoln Military Property Management, Inc.

PAYNE & FEARS LLP  
ATTORNEYS AT LAW  
4 PARK PLAZA, SUITE 1100  
IRVINE, CA 92614  
(949) 851-1100

Lincoln Military Property Management, Inc., a Delaware corporation, for itself and for no other defendant, denies, generally and specifically, each and every allegation contained in the Complaint for Damages filed herein by Plaintiff Julie Pickering ("Plaintiff"). Defendant further denies, generally and specifically, that Plaintiff has been damaged in any sum, or at all, by reason of any act or omission on the part of Defendant or on the part of any agent or employee of Defendant, or any of them.

### AFFIRMATIVE DEFENSES

#### FIRST AFFIRMATIVE DEFENSE

##### (Statute of Limitations)

1. Plaintiff's claims are barred in whole or in part by the applicable statutes of limitation, including but not limited to Code of Civil Procedure sections 338 and 340, and California Labor Code section 203, to the extent that Plaintiff has stated valid claims to which those provisions apply.

#### SECOND AFFIRMATIVE DEFENSE

##### (Failure to Exhaust Administrative Remedies)

2. Plaintiff's claims are barred in whole or in part because Plaintiff failed to satisfy the procedural prerequisites prior to filing the action or to exhaust available statutory or administrative remedies in a timely manner, including her administrative remedies before the California Labor Workforce Development Agency.

**THIRD AFFIRMATIVE DEFENSE****(Proper Compensation)**

3. Plaintiff's claims are barred in whole or in part because at all times mentioned in the Complaint, Plaintiff was compensated properly pursuant to the requirements contained in the California Labor Code and the Wage Orders of the California Industrial Welfare Commission and/or applicable federal law.

**FOURTH AFFIRMATIVE DEFENSE****(Failure to Perform Services)**

4. Plaintiff's claims are barred in whole or in part because Plaintiff failed to perform services which Plaintiff agreed to perform for her employer and did not use ordinary care and diligence in carrying out those services.

**FIFTH AFFIRMATIVE DEFENSE****(Failure to Comply With Employer's Directions)**

5. Plaintiff's claims are barred in whole or in part because Plaintiff failed to comply substantially with all directions of her employer concerning the services for which Plaintiff was engaged, including directions regarding meal and rest periods and overtime.

**SIXTH AFFIRMATIVE DEFENSE****(Good Faith Belief)**

6. Plaintiff's claims are barred in whole or in part because any decisions made by Defendant with respect to Plaintiff's employment, meal breaks and rest periods and wages were made in good faith and reasonably based on the facts and the law as Defendant understood them.



**SEVENTH AFFIRMATIVE DEFENSE****(Legitimate Business Reason)**

7. Plaintiff's claims are barred in whole or in part because each employment action of which Plaintiff complains, if it occurred at all, was taken for legitimate business reasons that did not violate public policy or any statutory prohibition.

**EIGHTH AFFIRMATIVE DEFENSE****(Justification)**

8. Plaintiff's claims are barred in whole or in part because Defendant's actions with respect to the subject matter in each of the alleged causes of action were undertaken in good faith and for good cause, with the absence of malicious intent to injure Plaintiff, and constitute lawful, proper and justified means to further Defendant's purpose to engage in and continue its business activities.

**NINTH AFFIRMATIVE DEFENSE****(Good Faith)**

9. The Complaint, and each cause of action contained therein, is barred on the ground that Defendant acted in good faith conformity with and reliance on regulations, orders, rulings, interpretations, practices or policies of the Wage and Hour Division of the United States Department of Labor, the California Industrial Welfare Commission, and the California Division of Labor Standards Enforcement.

**TENTH AFFIRMATIVE DEFENSE**

**(No Ratification)**

10. Defendant is not liable for damages because if any person engaged in intentional, willful or unlawful conduct as alleged in Plaintiff's Complaint, he or she did so without the knowledge, authorization or ratification of Defendant.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(No Basis for Class Certification)**

11. The Complaint, and each alleged cause of action therein, is not proper for treatment as a class action because, among other reasons: (a) Plaintiff has not identified an ascertainable class; (b) Plaintiff is an inadequate representative of the purported class; (c) Plaintiff cannot establish typicality of claims; (d) Plaintiff cannot establish sufficient numerosity in the putative class; and (d) the individualized nature of the putative class's claims makes class treatment inappropriate.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

12. Plaintiff's claims are barred in whole or in part by Plaintiff's failure to mitigate damages as required by law.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Uncertainty)**

13. Plaintiff's losses, if any, are speculative and uncertain or both, and therefore not compensable.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(No Penalties or Liquidated Damages)**

14. Each claim for penalties or liquidated damages contained within the Complaint is barred on the grounds that penalties are not authorized to be added to penalties and that the acts or omissions alleged by Plaintiff were made in good faith by Defendant, and Defendant had reasonable grounds for believing that the alleged acts or omissions were not in violation of the law. Consequently, Plaintiff is not entitled to penalties, and the amounts claimed by plaintiff are barred accordingly.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Federal Enclave Doctrine)**

15. Plaintiffs' Complaint, and each cause of action alleged therein, is barred by the federal enclave doctrine.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Causation by Plaintiff)**

16. Plaintiff's claims are barred in whole or in part because any damages or injuries that Plaintiff allegedly suffered were caused by Plaintiff's own conduct and actions, and not because of any unlawful conduct or actions by Defendant.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(No Attorney Fees)**

17. Plaintiff's request for attorney fees is barred, in whole or in part, because Plaintiff has not alleged the violation of any contract or statute for which recovery of attorney fees is authorized.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

18. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands because of Plaintiff's conduct and actions.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

19. Plaintiff's claims are barred in whole or in part because Plaintiff is estopped from asserting each of the claims alleged therein by her own conduct.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Waiver)**

20. Plaintiff's claims are barred in whole or in part because Plaintiff has waived the right to assert each of the claims alleged herein, by reason of her conduct and actions.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Laches)**

21. Plaintiff's claims are barred in whole or in part by the doctrine of laches.

WHEREFORE, Defendant prays for judgment as follows:

1. That judgment be entered in favor of Defendant and against Plaintiff;
2. That the Complaint herein be dismissed in its entirety with prejudice;
3. That Defendant be awarded its costs of suit herein;
4. That Defendant be awarded reasonable attorneys' fees as determined by the Court; and
5. For such other and further relief as the Court may deem just and proper.

DATED: May 31, 2011

PAYNE & FEARS LLP

By: \_\_\_\_\_

JAMES R. MOSS, JR.

Attorneys for Defendant  
LINCOLN MILITARY PROPERTY  
MANAGEMENT, INC.

4825-4483-2521, v. 1

**PROOF OF SERVICE**

Julie Pickering v. Lincoln Property Company, et al.  
San Bernardino Superior Court, Joshua Tree Branch, Case No. CIVMS1000760

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On May 31, 2011, I served the following document(s) described as **ANSWER OF DEFENDANT LINCOLN MILITARY PROPERTY MANAGEMENT, INC. TO PLAINTIFF'S COMPLAINT** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

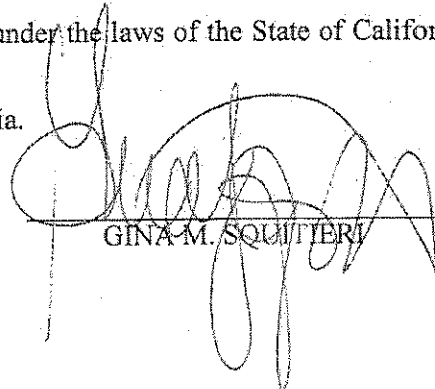
Juan M. Armenta  
Attorney at Law  
English Lloyd & Armenta  
41750 Rancho Las Palmas Drive  
Building G  
Rancho Mirage, CA 92270

Attorneys For Plaintiff JULIE  
PICKERING  
Tel: (760) 340-2777  
Fax: (760) 340-6895

☒ (BY U.S. Mail) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 31, 2011, at Irvine, California.

  
GINA M. SQUITIERI

4842-9670-2985.1

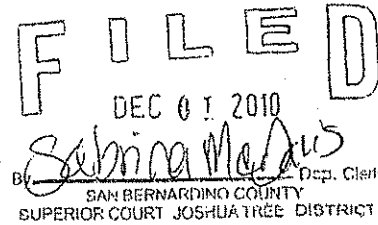
PROOF OF SERVICE

**EXHIBIT E**

1 **ENGLISH LLOYD & ARMENTA**  
2 Juan M. Armenta/150599  
3 74075 El Paseo Drive, Suite C5  
4 Palm Desert, California 92260

5 TEL (760) 340-2777 FAX (760) 340-6895

6 ATTORNEYS FOR JULE PICKERING



7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **COUNTY OF SAN BERNARDINO**

9 JULIE PICKERING,

10  
11 Plaintiffs,

12 v.

13 LINCOLN PROPERTY COMPANY, Does 1 to  
14 50,

15 Defendants,  
16  
17

CASE NO. CIVMS1000760

**FIRST AMENDED COMPLAINT FOR  
THE RECOVERY OF WAGES AND  
CIVIL PENALTIES**

18 Plaintiff JULIE PICKERING, for Causes of Action against Defendants LINCOLN  
19 PROPERTY COMPANY, Does 1 to 50, alleges as follows:

20 I.

21 **INTRODUCTORY STATEMENT AND NATURE OF ACTION**

22 1. This action arises out of unlawful employment practices against Plaintiff JULIE  
23 PICKERING (hereinafter referred to as "Plaintiff" or "Pickering") by her employer, Defendants  
24 LINCOLN PROPERTY COMPANY, Does 1 to 50,, (hereinafter referred to as "Defendant" or



1 "Lincoln). Pickering brings this action against Lincoln and Does 1 through 50 for engaging in  
2 a systematic scheme of wage abuse and unlawful employment practices, including but not  
3 limited to failing to pay Plaintiff overtime wages, failing to provide Plaintiff with proper meal  
4 and rest breaks and premium pay for missed breaks, failing to record hours worked and meal  
5 periods, and failure to provide itemized wage statements.

6 Reference to "Plaintiff" or "Pickering" means Plaintiff in her individual capacity and in  
7 her his ex relatione capacity on behalf of the State of California. Further, reference to  
8 Plaintiff within in each Cause of Action also means similarly situated employees.

9 2. Pickering seeks to recover, among other things, unpaid wages and benefits,  
10 interest, attorneys' fees, penalties, costs and expenses pursuant to the California Labor Code  
11 including but not limited to §§ 218.5, 218.6, 226, 226.7, 510, 512 and 1194.

## 12 II.

### 13 PARTIES, JURISDICTION, AND VENUE

14 3. Plaintiff is and at all relevant times was a resident of the State of California.

15 4. Plaintiff is informed and believes and on that basis alleges that Lincoln is and at all  
16 relevant times was authorized to do business in the State of California and conducted  
17 business in the various locations in the State of California, including the County of San  
18 Bernardino, and that it is an employer as defined in and subject to the California Labor Code  
19 and the Industrial Welfare Commission ("IWC") Orders.

20 5. The true names and capacities of the Defendants named as DOES 1 through 50  
21 are presently unknown to Plaintiff. Plaintiff will amend this Complaint, setting forth the true  
22 names and capacities of these fictitious Defendants when they are ascertained. Plaintiff is  
23 informed and believes and on that basis alleges that each of the fictitious Defendants has  
24 participated in the acts alleged in this Complaint.



1 13. During her employment Pickering Lincoln failed to keep records of wages paid,  
2 hours worked, meal periods, etc. as required by the Labor Code and IWC Order No. 5-  
3 2001(7).

4 IV.

5 FIRST CAUSE OF ACTION

6 [Failure to Provide Mandated Rest & Meal Periods]

7 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order No. 5, §§ 11 & 12)

8 14. Plaintiff alleges and incorporates by this reference paragraphs 1 through 13  
9 inclusive, as though fully set forth herein.

10 15. Labor Code § 226.7 requires employers including Defendant to provide to its  
11 employees proper meal and rest periods as mandated by IWC Order No. 5-2001.

12 16. Labor Code § 512(a) and IWC Order No. 15-2001, provide in part:

13 "(A) No employer shall employ any person for a work period of  
14 more than five (5) hours without a meal period of not less than 30  
15 minutes, except that when a work period of not more than six (6)  
16 hours will complete the day's work the meal period may be waived  
17 by mutual consent of the employer and employee. Unless the  
18 employee is relieved of all duty during a 30 minute meal period,  
19 the meal period shall be considered an "on duty" meal period and  
counted as time worked. An "on duty" meal period shall be  
permitted only when the nature of the work prevents an employee  
from being relieved of all duty and when by written agreement  
between the parties an on-the-job paid meal period is agreed to.  
The written agreement shall state that the employee may, in  
writing, revoke the agreement at any time.

20 (B) If an employer fails to provide an employee a meal period in  
21 accordance with the applicable provisions of this Order, the  
22 employer shall pay the employee one (1) hour of pay at the  
employee's regular rate of compensation for each work day that  
the meal period is not provided."

23 17. Defendant violated Labor Code §§ 226.7 and 512 and the IWC Orders when it  
24 failed to provide proper meal periods to Plaintiff during the time period Plaintiff worked for

1 Lincoln.

2 18. Defendant violated Labor Code § 226.7 and the IWC Orders when it failed to  
3 provide proper rest periods to Plaintiff.

4 V.

5 **SECOND CAUSE OF ACTION**

6 [Failure to Pay Premium Wages]

7 19. Plaintiff alleges and incorporates by this reference paragraphs 1 through 18  
8 inclusive, as though fully set forth herein.

9 20. Pursuant to Labor Code § 226.7(b) and IWC Order No. 5-2001, § 11(B),  
10 Defendant is required to pay Plaintiff one additional hour of pay at the employee's regular  
11 rate of compensation for each day that the meal period is not provided. Defendant has not  
12 done so.

13 21. Pursuant to Labor Code § 226.7(b) and IWC Order No. 5-2001, § 12(B),  
14 Defendant is required to pay Plaintiff one additional hour of pay at the employee's regular  
15 rate of compensation for each day that the rest period is not provided. Defendant has not  
16 done so.

17 22. As a result of Defendant's failure to pay Plaintiff an additional hour of pay for each  
18 day a meal period was not provided, Plaintiff suffered and continues to suffer a loss of wages  
19 and compensation, all in an amount to be shown according to proof at trial and within the  
20 jurisdiction of this Court.

21 23. As a result of Defendant's failure to pay Plaintiff an additional hour of pay for each  
22 day a rest break period was not provided, Plaintiff suffered and continues to suffer a loss of  
23 wages and compensation, all in an amount to be shown according to proof at trial and within  
24 the jurisdiction of this Court.



1 30. Plaintiff incorporates paragraphs 1 through 29 above.

2 31. Labor Code § 226 requires an employer to provide to an employee a wages  
3 statement providing, among other things, wages paid, rate of pay, regular and overtime,  
4 hours worked and deductions made.

5 32. Lincoln failed to provide wages statements to Plaintiff as required by the Labor  
6 Code.

7 33. As a result of the failure to keep records Plaintiff has been denied the opportunity  
8 to review and have proof of wages paid, rate of pay, regular and overtime, hours worked and  
9 deductions made and Plaintiff is entitled to the relief identified in Labor Code § 226(e),  
10 including penalties and attorney fees.

11 VI.

12 FIFTH CAUSE OF ACTION

13 [Failure to Pay Overtime]

14 34. Plaintiff incorporates paragraphs 1 through 33 above.

15 35. Labor Code § 510 provides that a day's work is eight hours and that all hours  
16 worked in excess of eight hours per day must be paid at overtime rates.

17 36. Plaintiff worked hours that should have been compensated at overtime rates.  
18 Plaintiff was frequently not paid overtime rates for her overtime hours worked.

19 37. Pursuant to Labor Code § 1194 Plaintiff is entitled to bring an action to recover  
20 the overtime wages and in addition to wages is entitled to interest, costs and attorney fees.

21 VII.

22 SIXTH CAUSE OF ACTION

23 [Private Attorney General Act of 2004]

24 38. Plaintiff incorporates paragraphs 1 through 37 above.

1       39. The Labor & Workforce Development Agency (LWDA) is an agency of the  
2 executive branch of the State of California. It is empowered to enforce the labor laws of  
3 California and generally executes that enforcement by a subdivision named the Division of  
4 Labor Standards Enforcement (DLSE).

5       40. On January 1, 2004, the Private Attorney General Act of 2004 ("PAGA") became  
6 effective. It states in relevant part,

7               "Notwithstanding any other provision of law, any provision of this  
8 code that provides for a civil penalty to be assessed and collected  
9 by the Labor and Workforce Development Agency or any of its  
10 departments, divisions, commissions, boards, agencies, or  
11 employees, for a violation of this code, may, as an alternative, be  
recovered through a civil action brought by an aggrieved  
employee on behalf of himself or herself and other current or  
former employees pursuant to the procedures specified in Section  
2699.3."

12       41. Lincoln at all times relevant to this complaint was a corporation operating within  
13 the State of California. At all times relevant to this complaint Lincoln employed dozens of  
14 employees in the State of California, making it subject to the labor laws of the State of  
15 California and subject to the jurisdiction of this court.

16       42. Pickering, an adult resident of the State of California, was an employee of Lincoln  
17 during 2009 in Palm Springs, California, and within the jurisdiction and venue of this court.

18       43. On October 12, 2009, pursuant to Labor Code § 2699.3(a)(1), the LWDA was  
19 provided notice of an intention to commence an action pursuant to the Private Attorney  
20 General Act of 2004 to recover civil penalties on behalf of the LWDA for violations by Lincoln  
21 of Labor Code §§ 226.7, 512, and associated IWC Orders, and provided the facts and  
22 theories to support the alleged violations. This notice was provided by certified mail as  
23 required by Labor Code § 2699.3(a)(1), October 12, 2009, to both defendants and the  
24



1 LWDA. On December 8, 2009, the LDWA advised Pickering that it would not proceed and  
2 that Pickering as the Relator could proceed on behalf of the LWDA.

3 44. As to Relator and similarly situated employees, Lincoln has failed to:

- 4 • provide meal and rest breaks as required by Labor Code § 226.7 and 512;
- 5 • failed to pay premium wages for missed meal and rest breaks as required by  
6 Labor Code § 226.7 and 812;
- 7 • failed to pay overtime as required by Labor Code § 510, 1194;
- 8 • failed to maintain records of hours and meal periods in violation of Labor Code  
9 226;
- 10 • failed to provide itemized statements to employees in violation of Labor Code §  
11 226;

12 A civil penalty is assessable for each violation per PAGA and relevant Labor Code  
13 sections which Relator seeks on behalf of the LWDA per PAGA.

14 VI.

15 SEVENTH CAUSE OF ACTION

16 [Violation of Bus. & Prof. Code § 17200 et Seq.]

17 45. Plaintiff incorporates paragraphs 1 through 48 above.

18 46. Defendant's failure to pay wages for missed meal and rest periods in violation of  
19 California Law (Labor Code §§ 226.7(b), 510, 512 and Industrial Welfare Commission Wage  
20 Order No. 7 constitutes an unlawful business act and practice in violation of Business &  
21 Professions Code § 17200 et seq.

22 47. Pursuant to Business and Professions Code § 17200 et seq., Plaintiff and the  
23 class members are entitled to restitution of the unpaid wages under Labor Code § 226.7, 510  
24 and 512 withheld and retained by defendants during a period that commences four years



1 prior to the filing of this action and continuing at least through the date judgement is entered  
2 in this action.

3 48. Plaintiff seeks restitution of all unpaid wages, waiting time wages, a permanent  
4 injunction requiring defendants to afford meal and rest breaks and pay for missed meal  
5 periods, interest, an award of attorney's fees pursuant to Code of Civil Procedure § 1021.5  
6 and other applicable law, and costs.

7 VII.

8 CLASS ALLEGATIONS

9 49. This action has been brought and may properly be maintained as a class action  
10 pursuant to the provisions of CCP § 382 and other applicable law, because there is a  
11 well-defined community of interest in the litigation and the proposed class is ascertainable.

12 50. The proposed class that Plaintiff seeks to represent is composed of current and  
13 former employees of Lincoln within California at any time beginning four years preceding the  
14 filing of this complaint holding any position in which they acted as a elder health care  
15 provider.

16 51. There is a well defined community of interest in the litigation and the class is  
17 ascertainable:

18 a. Numerosity: The plaintiff class is so numerous that the individual joinder of all  
19 members is impractical under the circumstances of this case. While the exact number of  
20 class members is unknown to Plaintiff at this time, Plaintiff is informed and believes and  
21 thereon alleges that in California well over twenty current and former employees of Lincoln  
22 were denied meal and rest breaks and were not compensated for missed meal breaks and  
23 have not had records regarding hours worked and meal periods maintained.

1        b. Common questions predominate: Common questions of law and fact exist as to all  
2 members of the plaintiff class and predominate over any questions that affect only individual  
3 members of the class. The common questions of law and fact include, but are not limited to:

4            i) Whether defendants' practice of not affording rest breaks to employees who  
5 share common classifications, duties, responsibilities was unlawful and violative of the  
6 California Labor Code and Industrial Welfare Commission orders;

7            ii) Whether defendants' practice of not affording meal breaks to employees  
8 who share common classifications, duties, responsibilities was unlawful and violative of the  
9 California Labor Code and Industrial Welfare Commission orders;.

10           iii) Whether defendants' practice of not paying for missed rest breaks to  
11 employees who share common classifications, duties, responsibilities and violative of the  
12 California Labor Code and Industrial Welfare Commission orders;

13           iv) Whether defendants' practice of not paying for missed meal breaks to  
14 employees who share common classifications, duties, responsibilities and violative of the  
15 California Labor Code and Industrial Welfare Commission orders;

16           v) Whether the retention of the wages due the employees who share common  
17 classifications, duties, responsibilities was intentional;

18           vi) Whether records were kept regarding hours worked and meal periods;

19           vii) Whether the failure to keep records hours worked and meal periods was  
20 intentional;

21           viii) Whether itemized statement were provided to employees;

22           ix) Whether employees were systematically paid less than minimum wage and  
23 whether this was a design or plan by management;

24           x) Whether employees hours were set so as to merit overtime pay;

1 xi) Whether employees were systematically not paid overtime when merited  
2 and whether this was a design or plan by management.

3 c. Typicality: Plaintiff's claims are typical of the claims of the class members. Plaintiff  
4 and the members of the class sustained damages arising out of defendants' common  
5 practice of failing to afford rest and meal breaks, failing to pay for missed meal and rest  
6 periods and failure to keep records. Plaintiff, like the other class members, routinely worked  
7 more than six hours per day and was not afforded rest or meal breaks and was not paid for  
8 missed meal periods. Plaintiff performed the same general duties and had the same general  
9 responsibilities as the other class members. Each of the claims of individuals does not  
10 exceed \$75,000.00.

11 d. Adequacy: Plaintiff will fairly and adequately protect the interests of the members  
12 of the class. Plaintiff has no interest that is adverse to the interests of the other class  
13 members.

14 e. Superiority: A class action is superior to other available means for the fair and  
15 efficient adjudication of this controversy. Because individual joinder of all members of the  
16 class is impractical, class action treatment will permit a large number of similarly situated  
17 persons to prosecute their common claims in a single forum simultaneously, efficiently, and  
18 without the unnecessary duplication of effort and expense that numerous individual actions  
19 would engender. The expenses and burdens of individual litigation would make it difficult or  
20 impossible for individual members of the class to redress the wrongs done to them, while  
21 important public interests will be served by addressing the matter as a class action. The cost  
22 to and burden on the court system of adjudication of individualized litigation would be  
23 substantial, and substantially more than the costs and burdens of a class action.  
24

1 Individualized litigation would also prevent the potential for inconsistent or contradictory  
2 judgments.

3 f. Public Policy Consideration: Employers throughout the state violate wage and hour  
4 laws. Current employees are often afraid to assert their rights out of fear of direct or indirect  
5 retaliation. Former employees are fearful of bringing actions because they perceive their  
6 former employers can blacklist them in their future endeavors through negative references  
7 and by other means. Class actions provide the class members who are not named in the  
8 complaint with a type of anonymity that allows for vindication of their rights.

9 WHEREFORE, Plaintiff prays for relief as follows:

10 1. For all unpaid wages under Labor Code § 226.7(b), 510, 512, and 1194, in a sum  
11 for each individual not to exceed \$75,000.00;

12 2. For reasonable attorney fees, cost of suit, and interest to the extent permitted by  
13 law, including but not limited to PAGA and Labor Code §§ 218.5, 218.6, 226, 510, 512, 1194  
14 and Code of Civil Procedure § 1021.5;

15 3. For interest pursuant to Labor Code § 218.6;

16 4. For restitution per Business & Professions Code § 17200 et seq.

17 5. For a permanent injunction per Business & Professions Code § 17200 et seq.

18 6. For civil penalties per PAGA;

19 7. For class certification of this action as a class action, appointment of Plaintiff as the  
20 class representative and for Plaintiff's counsel to be confirmed as class counsel;

21 8. For such other relief as the deemed just and proper;

22 Dated: November 23, 2010

Respectfully submitted,

ENGLISH, LLOYD & ARMENTA

Juan M. Armenta

PROOF OF SERVICE

Pickering v. Lincoln Military Property Management, Inc.

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

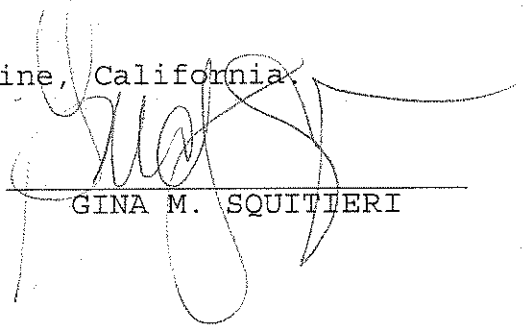
On June 1, 2011, I served the following document(s) described as **PETITION AND NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C §§ 1331 AND 1441** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

Juan M. Armenta	Attorneys For Plaintiff
Attorney at Law	JULIE PICKERING
English Lloyd & Armenta	Tel: (760) 340-2777
41750 Rancho Las Palmas Drive	Fax: (760) 340-6895
Building G	
Rancho Mirage, CA 92270	

☒ (BY U.S. Mail) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 1, 2011, at Irvine, California.

  
GINA M. SQUITIERI

4842-3166-4649.1

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Virginia A. Phillips and the assigned discovery Magistrate Judge is David T. Bristow.

The case number on all documents filed with the Court should read as follows:

**EDCV11- 851 VAP (DTBx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☐ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☒ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.



**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)

JULIE PICKERING

DEFENDANTS

LINCOLN MILITARY PROPERTY MANAGEMENT,  
INC.

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Juan M. Armenta, SBN 150599  
 English LLOYD & Armenta  
 41750 Rancho Las Palmas Drive  
 Bldg G  
 Rancho Mirage, CA 92270  
 760.340.2777

Attorneys (If Known)

James L. Payne, SBN 107021  
 James R. Moss, Jr. SBN 196725  
 Payne & Fears LLP  
 4 Park Plaza, Suite 1100  
 Irvine, CA 92614  
 949.851.1100

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only  
(Place an X in one box for plaintiff and one for defendant.)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

IV. ORIGIN (Place an X in one box only.)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No☒ MONEY DEMANDED IN COMPLAINT: \$ Unspecified

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

U.S. Const. art. I, Section 8, cl. 17. Labor law claims arising on a federal enclave.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	CRIMINAL	PRISONER	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General Habeas Corpus	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 550 Civil Rights	<input checked="" type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 861 HIA (139SH)
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 891 Agricultural Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 865 RSI (405(a))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 240 Torts to Land				<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 245 Tort Product Liability				
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 290 All Other Real Property				
<input type="checkbox"/> 950 Constitutionality of State Statutes					

FOR OFFICE USE ONLY: Case Number: **EDCV 11-00851 VAP (DTBx)**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

CV-71 (05/08)

CIVIL COVER SHEET

Page 1 of 2  
CCD-JS44

COPY

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	San Diego

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	San Diego

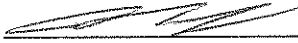
(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	San Diego

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

**Note: In land condemnation cases, use the location of the tract of land involved**

**X. SIGNATURE OF ATTORNEY (OR PRO PER):**  Date June 1, 2011

JAMES R. MOSS, JR.

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

**Key to Statistical codes relating to Social Security Cases:**

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))



PROOF OF SERVICE

Pickering v. Lincoln Military Property Management, Inc.

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

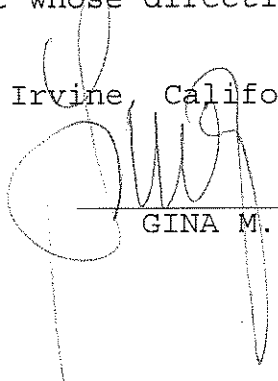
On June 1, 2011, I served the following document(s) described as **CIVIL COVER SHEET** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

Juan M. Armenta	Attorneys For Plaintiff
Attorney at Law	JULIE PICKERING
English Lloyd & Armenta	Tel: (760) 340-2777
41750 Rancho Las Palmas Drive	Fax: (760) 340-6895
Building G	
Rancho Mirage, CA 92270	

☒ (BY U.S. Mail) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 1, 2011, at Irvine, California.

  
\_\_\_\_\_  
GINA M. SQUITIERI

4842-3166-4649.1